IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 26820 of 2006(P)

PETITIONERS:
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1. **A.G. SANTHOSH, AGED 25 YEARS,**
   S/O. GOPALAN, AZHAKATHU VEEDU, MATHOOR P.O.,
   PATHANAMTHITTA.

2. **DILEEP V. RAJAN, AGED 36 YEARS,**
   S/O. VIJAYARAJAN, PUTHEN VEEDU, MATHOOR P.O.,
   PATHANAMTHITTA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   LOCAL SELF ADMINISTRATION, THIRUVANANTHAPURAM.

2. **DISTRICT COLLECTOR, PATHANAMTHITTA.**

3. **TAHSILDAR, KOZHENCHERRY.**

4. **CHENNEERKARA PANCHAYAT,**
   REPRESENTED BY ITS SECRETARY, CHENNEERKKARA.

5. **RAJESH KUMAR,**
   RAJESH BHAVAN, MATHOOR P.O., PATHANAMTHITTA.

BY ADV. SRI.ESM.KABEER for R5
SRI.N.SUKUMARAN for R4
SRI.G.BENO
SRI.S.SHYAM
BY SR.GOVERNMENT PLEADER SRI.MATHEW G.VADAKKEL for R1 to R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/01/2007 ALONG WITH WPC NO. 28139 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) Nos. 26820 and 28139 OF 2006

Dated this the 4th day of January, 2007

JUDGMENT

The petitioners in WP(C) No.26820/06 are residents of the Chenneerkara Panchayat, the 4th respondent in the Writ Petition. The 1st respondent in that case is the State. Respondents 2 and 3 are District Collector and the Tahsildar and the 5th respondent is one Sri.Rajesh Kumar to whom the right for collecting river sand from Mathoor Kadavu, within the limits of the 4th respondent Panchayat was given on auction by the 3rd respondent-Tahsildar. The petitioners refer to Section 218 of the Panchayat Raj Act which provides the right over the rivers flowing through the Panchayat are vests in the Panchayat. Accordingly any income collected by way of sale of sand from the rivers or otherwise is the income of the Panchayat and reference in this regard is made through the Kerala Protection of River Banks & Regulation of Removal of Sand Act, 2001. Petitioners refer to Rule 29 Sub Rule 3 of the Protection of River Banks and Regulation of Removal of Sand Rules and submit that while conducting sand auction, the availability and requirement of sand in that area shall be taken into account and such auction shall be conducted in the presence of Secretaries and Members of the concerned Local Authority and Tahsildar of that area and prices of

sand shall be fixed after taking into consideration the expenses for loading sand into the vehicle and also the labour charge for sand removal. It is pointed out that the very basis of such provisions in the Rule is to fix the sand price by the Municipal authorities and to prevent the successful bidders from selling sand above the price fixed. The petitioners refer to Sub Rule 2 of Rule 29 which provides that the District Expert Committee shall fix the quantity available for extraction and shall be sold after paying the royalty by collecting the entire quantity of such sand on river banks. Petitioners also refer to Clause (g) of Sub Rule 1 of Rule 29, which provides that in the case of removal of sand jointly by Panchayat, the amount is to be equally divided after deducting the royalty to Mining and Geology Department, wages to workers and share towards River Management Fund and ancillary expenditure. Petitioner refers to other provisions also including Rule 15 which provides for the powers of the Kadavu Committee in the matter of fixation of price of sand in respect of particular Kadavu. Petitioner also refers to the preamble of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 and submits that in spite of the various regulatory measures noticed by the said Act and Rules therein the respondents who are vested with authority to permit sand collection are not keeping any limits in the matter of fixation of price for the sand. They contend that even though there is fixation regarding price at Rs.2,000/- in the auctions held in many places prices are going beyond

double the above limit. On account of such price fixation there is a tendency among bidders to exploit the river in a large scale. Though the quantity permitted is very little, when stringent measures were taken to prevent such exploitation the bidders are selling the sand at exceedingly higher rates. Petitioner submits that the 3rd respondent conducted auction of the right to collect river sand from Mathoor Kadavu in respect of Chenneerkkara Panchayat was given at a price of Rs.6,500/-. Ext.P1 is the auction notice. Petitioner submits that in this auction, the price of river sand was fixed at Rs.6,500/- and the right to extract sand was purchased by the bidder for a total amount of Rs.3,07,613/-. The daily collection quantity being six loads and the period allowed to the Contractor being 12 days, the price paid by the Contractor for 72 loads will comes to Rs.3,07,613/-. Even without taking into account the labour charges for collection and transportation charges, the burden of a purchaser for one load of river sand will be around Rs.7,000/- and Ext.P2 receipt for payment of money is relied on by the petitioner in this regard. Petitioners claim that they are local residents who are who want to construct their own building. They are from the down trodden and weaker section of the community and are deeply aggrieved by the illegal action of the respondents in conducting auction by fixing the sand price as high as Rs.7,000/-. When such a sand price is fixed and that too by the conduct of auction at such a higher price, the Contractor will be tempted to extract river sand illegally and the same will affect the

ecology and environment. It is these evil effects which are sought to be prevented by incorporating statutes and by forming the Rules. Thereafter the petitioner contend that the auction now confirmed in favour of the 6th respondent for such a high price has to be set aside. Pointing out all the relevant aspects, Ext.P3 representation was submitted by the petitioners before respondents 2 to 4. Those respondents are sleeping over Ext.P3 and steps are taken for carrying out river sand collection. Petitioners have also produced receipt issued by the respondents for a sum of Rs.28,584/-in favour of one Sri.Ajith Kumar, for 60 loads of river sand as Ext.P4. From Ext.P4, it is seen that the sand collected from another Kadavu is below Rs.500/-. Thus between Kadavu, inter se there is such a disparity between prices and therefore the price of river sand from Mathoor Kadavu is per se exorbitant. Petitioners then submit that more than 50% of the people of Chenneerkara Panchayat are below the poverty line and they construct their houses by utilising grants given by the Panchayats. Normally these grants will be for amount upto Rs.10,000/- and when one load of sand is costing Rs.7,000/- it is not possible for any of the poor people to carry out any construction at all. Making all these averments, petitioners pray to issue a writ of mandamus commanding the respondents to set aside the auction of the right to collect river sand from Mathoor Kadavu of Chenneerkkara Panchayat at a total price of Rs.3,07,613/- be quashed and to issue a mandamus to the Panchayat and Tahsildar to

conduct auction by fixing the maximum price upto which the auction should be conducted by taking the value of sand with all expenses at less than Rs.2,000/- per load of river sand and also not to conduct auction if the price exceeds the said limit. The further relief which is prayed for in this Writ Petition is a writ of mandamus directing respondents 2, 3 and 4 to consider Ext.P3 representation and take a decision thereon at the earliest and no to permit river sand collection till a decision is taken on Ext.P3.

2. WP(C) No.28139 of 2006 is filed by Sri. Rajesh Kumar, the 5th respondent in WP(C)No. 26820 of 2006. The respondents in this Writ Petition are the State, the District Collector, the Tahsildar and the Panchayat. Ext.P1 produced in this case is the very same auction notice issued by the 3rd respondent Tahsildar, auction for the right to collect river sand from various kadavus of the Panchayat. The petitioner belongs to Scheduled Caste and is a person having no independent employment and therefore he participated in the auction held as per Ext.P1 notice and since in the said auction notice it was not stated anywhere that there should be limit regarding the collection quantity. Accordingly he purchased the right in the auction for collecting river sand from Mathoor Kadavu for a total amount of Rs.3,07,613/-. But at the time of execution of agreement he was told that he will be permitted to collect only 72 lorry loads of river sand during the said period and at that time he submitted a petition before the 3rd respondent stating that

he was not been informed of the maximum number of lorry loads that can be collected. He requested to reduce the price to Rs.2,000/- and permit him to collect river sand for such quantity as applicable to the total amount actually remitted by him if the price is calculated at the rate of Rs.2,000/-. Ext.P2 dt.13.10.06 is copy of that petition. Ext.P3 is copy of the receipt issued by the respondents against the remittance of Rs.3,07,613/-. Petitioner submits that the local residents are very much against the auction of the right to collect river sand for such a high price for such a short period. He submits that the local residents had filed complaints about the exorbitant price and Ext.P4 produced along with the writ petition is copy of such petition.(In WP(C) No.26280/06 this is produced as Ext.P3). Petitioner submits that even a public notice was issued by the residents of the locality seeking to reduce the prices of river sand and Ext.P5 is copy of the said public notice dt.13.10.06 in which it is threatened that unless the price of river sand is reduced, the public will go in for adjudication. The petitioner has then produced Ext.P6 copy of the interim order passed in WP(C) No.26820/06. Petitioner submits that no sand mining activity was conducted by the petitioner or other purchasers since there was heavy rain. In the case of the petitioner he was awaiting orders on the petition for reduction of price. He is a poor Harijan and it was through bank borrowings that he could remit the amount previously and he is unable to participate in the subsequent auction since he has no resources. The 3rd respondent is

now proceeding to conduct auction for the subsequent period. Therefore the petitioner again filed a petition not to conduct auction and for fixing the price of Rs.2,000/- and the right to collect river sand be given to him by fixing the number of lorry loads which can be collected per day. Ext.P7 is the representation. On these averments the petitioner has raised various grounds and pray that a writ of mandamus be issued commanding the Panchayat as well as the 3rd respondent not to conduct auction of the right to collect river sand from Mathoor Kadavu of Chenneerkkara Panchayat for subsequent period commencing from 1.11.06 and for a further writ of mandamus commanding the respondents to fix the value of river sand as provided under Rule 29(3) (a) and (b) of the Act No.18 of 2001 and to direct the Panchayat and the 3rd respondent to conduct auction of the right if necessary by fixing the limit of auction at the rate fixed. Petitioner also prays for a writ of mandamus to collect river sand from Mathoor Kadavu at the rate of Rs.2,000/- per load and by appropriating and adjusting the amount already deposited and by permitting him to collect river sand till the entire amount is adjusted by extending the period of collection. Later the petitioner has produced copy of my judgment in WP(C) 34799/2005 wherein I had disposed of that Writ Petition directing the District Collector to expedite and finalise the refund proceedings initiated for refund of that portion of the bid amount which is refundable to the petitioner in that case. It was in respect of another Kadavu within the

limits of another Panchayat. On the basis of that judgment the petitioner filed IA No.117 of 2007 praying that respondents be directed to refund the security amount under deposit or else to permit him to collect river sand at Rs.400/- per load.

3. In WPC No.26820 of 2006 the 3rd respondent Tahsildar has filed a statement. This statement was filed as directed by me. It is stated therein that the Government as per Circular NO.1731/P1-04/Revenue dt.01.02.2005 issued necessary directions and guidelines to the Tahsildar for conducting public auction of the available quantity of river sand based on the parameters suggested by the Expert Committee for Earth Science Studies, Centre for Water Resources Development and Management etc. A meeting of the District Expert Committee was held under the District Collector, Pathanamthitta on 03.10.06. The meeting decided to authorize the Tahsildar, Kozhencherry to conduct public auction to collect the river sand from the various Kadavus of the Achankovil river. Annexure R3(1) is copy of that report. On the basis of the decision taken as reported in Annexure R3(1) public auction was conducted on 11.10.06 for sale of six loads of river sand per day as done in the previous year also after giving adequate publicity in the local dailies, notice Board of the Taluk Office, Village Office and the respective Kadavu and the Panchayat Secretary also attended the auction as requested by the 3rd respondent. The averment that it was the 2nd respondent who fixed the price of sand at Rs.2,000/- per load is

denied as it is totally incorrect. None of the respondents have fixed any price. The Tahsildar conducted the public auction of the available quantity of river sand based on the parameters suggested by the Expert Committee consisting of Centre for earth Science Studies, Centre for water Resources Development and Management etc. as per the Circular dt.1.2.2005. A copy of the Circular is produced as Annexure R3(d). After the auction 50% of the sand value is given to the concerned Panchayats. It became necessary to conduct public auction only because no price was fixed by the Kadavu Committee. Petitioner's apprehension regarding illegal extraction of sand is unwarranted since special squads under the supervision of the Revenue - Police Officers have been constituted for taking appropriate action. As far as Mathoor Kadavu is concerned the right to collect sand was given at a total price of Rs.3,07,613/- which constitutes the sand value as Rs.4060/- per load, Royalty Rs.50 per load and sales tax Rs.4% per load. Being a public auction, competition is common. The bidders compete among themselves, as a result of which the bid amount goes up. The respondents are not responsible for the increase in price. It is then pointed out that the auction purchaser, Sri.Rajesh refused to sign the agreement of the Tahsildar.

4. The 5th respondent, Sri.Rajesh, has filed a detailed counter affidavit reiterating the grounds that he has raised in his Writ Petition No.28139/06 as ExtR5(a). He has produced a copy of the promissory

note executed by him in the context of raising of funds for the purpose of making the remedies. Ext.R5(b) produced by him is the first page of SSLC certificate. This is produced to show that he belongs to Kurava Community. Kurava is a Scheduled Caste. Ext.R5(c) produced by him is a petition dt.13.10.06 submitted before the District Collector. Ext.R5 (d) is copy of the public notice issued by the local public under the leadership of Janakeeya Samithi against the exorbitant price payable for the river sand. Ext.R5(e) is copy of agreement executed. He has incurred expenses by taking country boats on hire. According to him, the price of river sand in the other Kadavus will come to less than Rs.2,000/- in respect of 60 lorry loads by which the royalty amount will come only less than Rs.500/-.

5. The Panchayat which is the 4th respondent in 26280 has filed a detailed counter affidavit. The Panchayat in its counter affidavit refers to WP(c) No.6632/1996 filed by four petitioners therein for preventing removal of the sand from the Achankovil river passing through the territory of the 4th respondent Panchayat. In that Writ Petition, this Court passed Ext.R4(a) judgment on 9.9.97. In Ext.R4(a), the Panchayat was the 3rd respondent. The Panchayat was allowed under Ext.R4(a) to collect sand from the river subject to the directions of the Government and the District Collector. The Panchayat was collecting and selling the river sand from the kadavus within its jurisdiction as permitted in Ext.R4 (a). While so, the Kerala Protection of River Banks and Regulation of

Renewal of Sand Act 2001(Act 18 of 2001) came into force with effect from 15.4.02. The Rule now in force is in effective from 4.5.03. The 4th respondent was collecting and selling sand as per the provisions of the Act under the Rule with the necessary sanction from the concerned authorities and committees paying the royalty and other dues. The procedure was in force up to 31.3.95. But on 1.4.95 onwards it is the 3rd respondent who is directly auctioning the right to collect river sand on the basis of the Government Circular No.71731/P1/2004/Revenue dt.1.2.05. The 2nd respondent issued Circular No.C9/6502/05 dt.31.10.05. This Circular is produced by the Panchayat as Ext.R4(b). Ext.R4(b) has been issued to the 4th respondent-Panchayat. Under Ext.R4(b), the Panchayat was directed to sign and seal passes issued by the Tahsildar for transportation of sand. Such direction is being obeyed by the 4th respondent. The Tahsildar is paying the share of the sand realised to the Panchayat. In the counter affidavit, the Panchayat contends that as per the Act and Rules it is the Panchayat which has the right to arrange collection and sale of river sand on payment of royalty and share due to River Management Fund. Section 12(3) of the Act and Rule 17(1) (2) of the rules are referred to in this context. It is pointed out that there is no provision investing jurisdiction in the Tahsildar to auction the right to collect the river sand or realise its value. Such right actually vests with the Grama Panchayats. Ext.R4(b) Circular issued by the Government is accordingly contended as without

jurisdiction. The 4th respondent submits that the filing of the present counter affidavit is without prejudice to the right of the Panchayat to approach this Court for appropriate reliefs.

6. The maintainability of the present Writ Petition is strongly disputed in the counter affidavit of the Panchayat. It is contended that the petitioners have no locustandi to file the Writ Petition. They are espousing a public cause and not any private interest. No fundemental rights of theirs have been violated. It is then contended that the attempt of the petitioner is to protect the interest of the 5th respondent-Rajesh Kumar. This attempt will be evident from the materials placed on record and the background and the averments and prayers contained in both the writ petitions.

7. As directed by me the Government Pleader has produced the auction diary and report of Centre for Earth Science Studies, Water Resources Development and Management recommending removal of six loads of sand per day from Mathoor Kadavu.

8. Even though Sri. T.M. Abdul Latheef, learned counsel for the petitioner in WP(C) 26280/06, Sri.E.S.M Kabeer, counsel for the petitioner in WPC 28139/06, Sri. N. Sugunapalan, learned counsel for the Panchayat in both these cases and the learned Government Pleader, Mr. Mathew G. Vadakkel, have addressed me very elaborately inviting my attention to all the materials placed on record by the respective parties and the grounds raised in the Writ Petitions, I am of

the view that it is not necessary for this Court to go into the merits of any of the grounds raised or the submissions addressed. The period for which the right to collect river sand from Mathoor Kadavu was granted to the petitioner in WPC 28139/06 is already over. To that extent the WPC No.26820/06 has become infructuous. The prayer in Ext.P3 is to stay the collection of river sand on the strength of the auction conducted in favour of Sri.Rajesh and set aside the same in his favour. I do not find any specific prayer made in Ext.P3 in the context of the grievance voiced in the Writ Petition regarding the fixation of price. That Writ Petition therefore will stand dismissed. On my scanning of the materials, it is clear that the petitioners have been espousing the cause of Sri.Rajesh, petitioner in WPC 28139/06. As for WPC No.28139/06 also I do not find any warrant for granting the reliefs sought for; but there is only one circumstance in his favour for one reason or other he was not able to transport even a single lorry load of river sand. But then he himself is responsible for the same because admittedly he was not prepared to execute an agreement. His claim for refund will certainly be considered by the District Collector. He is permitted to make a proper representation before the District Collector claiming refund of the amount remitted by him and for payment of any other amounts which he claims to be due to him, on account of the loss which has been occasioned to him by way of loss of interest or otherwise due to his inability to extract river sand. The District Collector will consider the

same and dispose of the same in accordance with law. It is made clear that I have not expressed any opinion on the merits of his claim for refund of any amount or for payment of amounts in excess of what he actually remitted.

WP(C) No.26820 of 2006 is dismissed.

WP(C) No.28139 of 2006 is disposed of. No costs.

PIUS C. KURIAKOSE, JUDGE

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